

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

HILLSBORO EDUCATIONAL SUPPORT)	
ASSOCIATION, MNEA/NEA,)	
)	
Petitioner,)	
)	
v.)	Public Case No. R 90-032
)	
HILLSBORO R-III SCHOOL DISTRICT,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the filing by Hillsboro Educational Support Association, MNEA/NEA of a petition for certification as public employee representative of a bargaining unit comprised of all full-time mechanics and part-time bus drivers (including substitute bus drivers and driver clerks) in the Hillsboro R-III School District. A hearing was held on June 28, 1990 in Hillsboro, Missouri, at which representatives of Hillsboro Educational Support Association, MNEA/NEA and the Hillsboro School District were present. The case was heard by State Board of Mediation Chairman Mary L. Gant, employer member Pamela S. Wright and employee member Paul Sanchez. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo 1986.

At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

Some of the District's bus drivers and mechanics sought to organize collectively in the fall of 1988. A number of them signed cards authorizing the Hillsboro Educational Support Association (hereinafter HESA), a planned affiliate of the Missouri National Education Association (hereinafter MNEA) and National Education Association (hereinafter NEA) to represent them. HESA is an association made up exclusively of bus drivers and mechanics employed by the Hillsboro School District. The MNEA is an organization seeking to advance the interests of educational personnel on the state level, while the NEA seeks to advance those same interests at the national level. The MNEA UniServ Director assisting the Hillsboro employees in their organizing effort (Mike Bingman) petitioned this Board for an election and the District stipulated to same. At the District's insistence, the ballot specifically indicated that HESA was affiliated with the MNEA and NEA. A representation election was held in early 1989 which resulted in a tie vote, so the Association failed to achieve exclusive representation status.

In May 1989, the bus drivers and mechanics still interested in organizing met and elected June Midgett, a District bus driver, as president of HESA and Dorothy Young, also a District bus driver, was designated as second in command. At that time, a number of bus drivers filled out membership forms to become dues paying members of NEA, MNEA and the local association (HESA). During that summer, three members of the HESA attended a workshop on organizing sponsored by the MNEA.

At the beginning of the 1989-90 school year, HESA members met, established the third Thursday of each month as the regular monthly meeting date, and elected Midgett Treasurer. She then assumed the task of collecting membership dues at each regular meeting. Checks for dues are made out to "HESA" and forwarded to the MNEA's office in Jefferson City; MNEA in turn remits some of that dues money to the NEA.

At its regular monthly meetings in the fall of 1989 and into early 1990, the membership considered plans for a new representation election. Other topics were also addressed at these meetings, such as planning a fundraiser for a member with cancer and responding to a District policy regarding head lice and communicable diseases. At a HESA meeting in early 1990, the membership decided to advance the cause of Jeannie Tidwell, a District bus driver who had been involved in a disciplinary matter. A formal written grievance was compiled on Tidwell's behalf, submitted to District officials, and ultimately resolved to Tidwell's satisfaction.

In early 1990, a number of bus drivers and mechanics again signed cards authorizing HESA, an affiliate of the MNEA and NEA, to represent them. Bingman filed these authorization cards, along with an election petition, with the Board on March 18, 1990. Bingman designated the Petitioner as HESA, an affiliate of MNEA and NEA. The District raised certain procedural objections to the form in which the election petition was filed, so a new election petition was refiled with the Board and the original petition was subsequently dismissed. The revised election petition designated the Petitioner as "Hillsboro Education Support Association--Missouri National Education Association and National Education Association".

The HESA is not incorporated and does not yet have a formal constitution or bylaws. It has no staff of its own. At present it is an informal or planned affiliate of the MNEA which means that if it (i.e. HESA) wins the election and is certified by the Board as the exclusive representative for the District's bus drivers and mechanics, then it will formalize its relationship and become a formal affiliate of the MNEA and NEA. Until that happens, the MNEA allows local associations that are getting started, as is the case here, to identify themselves as affiliates of the MNEA and NEA. There is a detailed affiliation procedure by which local associations, such as HESA, formally affiliate with the MNEA and NEA. Once a local association affiliates with the MNEA, it agrees to abide by the constitution and bylaws of the MNEA and NEA.

The MNEA is the state affiliate of the NEA. In turn, some 200 local associations consisting of teachers and educational support personnel (i.e. clericals, custodians, bus drivers, aides, etc.) are formally affiliated with the MNEA. Neither the NEA nor the MNEA bargains on behalf of public employees; the local associations do that. Both the NEA and the MNEA provide staff and support services to their affiliates (i.e. the NEA to the MNEA and the MNEA to its 200 locals in the state of Missouri) which are financed through membership dues. The MNEA has 17 UniServ Directors working out of seven regional offices throughout the state. The MNEA routinely offers assistance to local groups that are attempting to organize and become the exclusive representative of a group of public employees. HESA is one of such groups. The MNEA has assigned a UniServ Director (Mike Bingman) to assist the Hillsboro bus drivers and mechanics organize, and is paying for that group's organizing expenses, officer training, and legal assistance. Should HESA win the representation election and be certified by the Board, this unit would not be owned by either the NEA or MNEA; rather the certified representative would be HESA.

CONCLUSIONS OF LAW

Hillsboro Educational Support Association, MNEA/NEA has petitioned to be certified as public employee representative of a bargaining unit comprised of all full-time mechanics and part-time bus drivers (including substitute bus drivers and driver clerks) in the Hillsboro School District. At the hearing, the parties stipulated that the above described bargaining unit is an appropriate bargaining unit within the meaning of the Missouri Public Sector Labor Law, Section 105.500(1) RSMo. That being so, there is no dispute as to the appropriateness of the bargaining unit in this case.

Instead, the issue here centers on the Petitioner's status, specifically whether HESA is a proper petitioner and whether it is a "labor organization" qualified to represent public employees. The Respondent contends it is not.

Attention is focused first on the question of whether HESA is a "labor organization". Section 105.500 RSMo, the definition section of the Missouri Public Sector Labor Law, does not define "labor organization". In the course of defining certain language contained in the Public Sector Labor Law, this Board has previously looked to the National Labor Relations Act, as interpreted by the National Labor Relations Board, for guidance. NEA v. Missouri State Board of Mediation, 695 S.W.2d 894-898 (Mo. banc 1985). Specifically, we have used the National Labor Relations Act's definition of "labor organization" with judicial approval. Baer v. Civilian Personnel Division, 747 S.W.2d 159 (Mo. App. 1988). Accordingly, that same definition will be applied herein. The National Labor Relations Act, 29 U.S.C. Section 152 (5), defines "labor organization" as "any organization of any kind, or any agency or employee representation committee or Plan, in which employees participate and which exist for the purpose, in whole or in part of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work". Applying this two-part definition here, HESA will be found to be a "labor organization" if:

1. Employees of the District participate in the Association, and;
2. The Association exists for the purpose in whole or in part of dealing with the District concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of employment.

HESA clearly meets both of the above criteria. With regard to the definition's first part, it is uncontradicted that not only do District bus drivers and mechanics participate in the Association, but in fact, it is made up exclusively of bus drivers and mechanics employed by the District. Next, the record contains several examples which satisfy the definition's second part. First, the Tidwell matter shows that the Association has already engaged in the adjustment of a grievance with District representatives. Consequently, the Association is "dealing with the District concerning grievances" within the meaning of the above definition. In addition, HESA's involvement in the modification

of a District policy regarding head lice and communicable diseases indicates that it is "dealing with the District concerning...conditions of employment" of its members. Therefore, inasmuch as there is no question that HESA is made up of Hillsboro School District employees and exists for the purpose of improving the working conditions of those employees, we find that it is a "labor organization" within the meaning of the Public Sector Labor Law. The fact that HESA is a somewhat fledgling organization that does not have its own bylaws, constitution, bank account, or staff does not change this result. That is because there is no requirement that it have these. Instead, it is sufficient that it meets the above-noted requirements.

Having so held, attention is turned to the Respondent's contention that "Petitioner is an entity that no one understands as an entity". We do. The Petitioner, HESA, is a planned local affiliate of the MNEA and NEA. This simply means that it expects to formally affiliate with the state and national organization should it become the certified representative of the District's bus drivers and mechanics. As a practical matter, it would be premature for the local to affiliate before it was actually certified. Moreover, there is no requirement that it do so. In the meantime, HESA is receiving support and assistance from MNEA as it attempts to get on its feet.

Next, although the District contends there is "confusion as to which entity is the petitioning entity", we feel there is no confusion whatsoever. Contrary to the Respondent's contention, there are not three petitioners herein, but rather only one, namely HESA. Said another way, MNEA and NEA are not petitioners herein and do not seek to represent the bus drivers and mechanics in their own name. In the event the Association wins the election, the District will be legally obligated to meet and confer with one organization, namely HESA, and that organization only. While HESA may decide to utilize the services of MNEA or conceivably NEA staff in this process, that

decision is for it to make. In our view, the reference on the election petition to organizations other than HESA does not complicate the matter or make it confusing. If anything, the effect is just the opposite, in that it explicitly identifies which state and national organization HESA plans to affiliate with, namely MNEA and NEA respectively. That being the case, it answers questions rather than raises them. The District itself recognized this in the first election run herein when it insisted that the ballot identify HESA as affiliated with the MNEA and NEA. Inasmuch as the District understood this relationship then, it is hard pressed to claim confusion regarding same the second time around.

We now turn to the District's final contention that HESA's pending affiliation with the MNEA and NEA raises a legal barrier to its representation of non-teachers here. The District's contention in this regard is based on its reading of the cases of Peters v. Board of Education of Reorganized School District #5, 506 S.W.2d 429 (Mo. 1974) and Finley v. Lindbergh School District, 522 S.W.2d 299 (Mo App. 1974). Both of these cases involved challenges to teacher associations' attempts to represent school teachers. In both cases, it was held that the teacher association involved therein was not a labor organization within the meaning of Section 105.510 RSMo of the Missouri Public Sector Labor Law. The affect of these decisions was to establish that teachers in Missouri cannot bargain with their public employers in the same fashion as "public employees" (within the meaning of the Act) can. Both cases are easily distinguishable from the instant situation on the basis that HESA seeks only to represent District bus drivers and mechanics (who qualify as public employees within the meaning of the Act) and has no intention of representing teachers (who do not qualify as public employees within the meaning of the Act). Moreover, contrary to the District's assertion, neither decision implies that a non-teacher association, such as HESA, is prevented from

affiliating with an association which represents teachers, such as MNEA. That being so, we hold that neither of these decisions preclude HESA, a planned affiliate of the MNEA and NEA, from representing the District's bus drivers and mechanics.

DECISION

It is the decision of the State Board of Mediation that HESA is a labor organization within the meaning of the Act and is not precluded from representing the District's bus drivers and mechanics because of its pending affiliation with the MNEA and NEA.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the stipulated bargaining unit as early as possible, but not later than thirty days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to be represented for the purpose of exclusive recognition by the Hillsboro Educational Support Association, an affiliate of the MNEA and NEA.

It is hereby ordered that the District shall submit to the Chairman of the State Board of Mediation, as well as to the Hillsboro Educational Support Association, MNEA/NEA, within fourteen days from the date of receipt of this decision, an alphabetical list of names and addresses of employees in the stipulated bargaining unit

who were employed during the payroll period immediately preceding the date of this decision.

Signed this 20th day of September, 1990.

STATE BOARD OF MEDIATION

(S E A L)

/s/ Mary L. Gant
Mary L. Gant, Chairman

/s/ Pamela S. Wright
Pamela S. Wright, Employer Member

/s/ Paul J. Sanchez
Paul Sanchez, Employee Member